

STATE OF MICHIGAN  
COURT OF APPEALS

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ALLSTATE INSURANCE COMPANY,

Plaintiff-Appellee,

v

SHARON DAVIS-BUYCK,

Defendant-Appellant.

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UNPUBLISHED

January 4, 2005

No. 250490

Wayne Circuit Court

LC No. 03-304436-NI

Before: Murphy, P.J., White and Kelly, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's order granting plaintiff's motion to reopen arbitration proceedings and denying defendant's motion for entry of judgment based upon the arbitration award. We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was insured under a policy with plaintiff that included uninsured motorist coverage. After defendant was involved in an automobile accident, plaintiff denied her claim for uninsured motorist benefits. The matter proceeded to arbitration. Plaintiff admits that, at the time of arbitration, both parties believed that the owner of the vehicle that struck defendant's vehicle did not have insurance coverage. The only issue before the arbitrators was whether defendant's injuries were the result of a preexisting condition, and not a result of the automobile accident. Defendant was awarded \$75,000 by the arbitration panel.

After the arbitration award was issued, plaintiff discovered that the owner of the vehicle that struck defendant's vehicle might have had insurance on the vehicle. Thereafter, plaintiff moved to reopen the arbitration proceedings in order to determine if the driver of the other vehicle was insured. The trial court granted plaintiff's motion.

We agree with defendant that the trial court erred in reopening the arbitration proceedings. Judicial review of arbitration awards is limited. A circuit court has three options when an award is challenged:

(1) confirm the award, (2) vacate the award if obtained through fraud, duress, or other undue means, or (3) modify the award or correct errors that are apparent on the face of the award. [*Konal v Forlini (On Remand)*, 235 Mich App 69, 74; 596 NW2d 630 (1999).]

See MCR 3.603(I), (J), and (K). In requesting that the trial court allow the arbitration proceeding to be reopened, plaintiff principally relied on subsection (b) of MCR 3.602(K)(1), which provides:

(1) On application made within 21 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award if:

(a) there is an evident miscalculation of figures or an evident mistake in the description of a person, a thing, or property referred to in the award;

(b) the arbitrator has awarded on a matter not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the issues submitted; or

(c) the award is imperfect in a matter of form, not affecting the merits of the controversy.

None of these subrules permit a trial court to order an arbitration proceeding to be reopened on the basis of an issue that a party discovers after an adverse award has been entered against it. As this Court held in *Beattie v Autostyle Plastics, Inc.*, 217 Mich App 572, 578-579; 552 NW2d 181 (1996), there is a policy favoring the finality of arbitration awards and, once the arbitrator makes his decision, it generally cannot be reexamined. Plaintiff's failure to raise before the arbitration panel any argument regarding the insured status of the driver that struck defendant's vehicle precludes it from obtaining modification of the award on this basis. *Graceman v Goldstein*, 93 Md App 658, 671; 613 A2d 1049, 1056 (1992); *Lebow v Bogner-Seitel Realty, Inc.*, 55 AD2d 695, 696; 389 NYS2d 51 (1976). Plaintiff's own investigation mistake in preparation for arbitration is not a proper basis for reopening arbitration.

Defendant further argues that she is entitled to have the award confirmed by the trial court and judgment entered in her favor based upon the award. We agree. Because plaintiff has failed to show that the award should be modified, defendant is entitled to have the award confirmed in her favor. MCR 3.602(K)(2). Accordingly, on remand, the trial court shall enter judgment in favor of defendant based upon the arbitration award. MCR 3.602(L).

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Helene N. White

/s/ Kirsten Frank Kelly